

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

SOLICITOR

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

U.S. PATENT & TRADEMARK OFFICE

APPLICANT : JOHN KOLLAR

APPEAL NO.: 1998-3109

SERIAL NO.: 08/567,564

US Fed Cir: 01-1640 VACATED and REMANDED

RESPONSE to INQUIRY ex FED. CIR. VACATE and REMAND

CERTIFICATE OF MAILING UNDER 37 CFR 1.8

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John Kollar

(Name of Registered Rep.)

John Kollar 4-22-02

(Signature and Date)

April 22, 2002

Assistant Commissioner for Patents
BOARD OF PATENT APPEALS AND INTERFERENCES
BOX INTERFERENCE
Washington, D.C. 20231

Administrative Patent Judges Warren, Owens and Robinson:

Appellant submits this Response to Justice Lourie's suggested Inquiry ex the US Court of Appeals for the Federal Circuit Vacate and Remand order of the above identified action.

Appellant advises that an EXPEDITED response in accordance with 37 CFR 1.607(b) "special dispatch" is required in this long delayed action.

RESPONSE to INQUIRY ex FED. CIR. VACATE and REMAND

Justice Lourie of the US Court of Appeals for the Federal Circuit reaffirms many citations addressing the on-sale issue from Pfaff, Moleculon, Mas-Hamilton, Group One and within this case more specifically details many existing aspects of the on-sale issue directed to the fact that a "product" (tangible) must be on-sale (Uniform Commercial Code).

Justice Lourie suggests a BPAI inquiry within that context. The answer to that query has likely been overlooked. It has been answered at the penultimate paragraph on A214 of the Appendix of 01-1640.

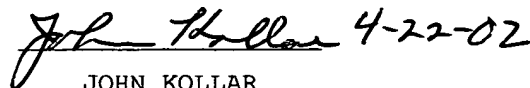
Verbatim therefrom,

"The function and fruition of that Agreement was in fact solely and purely chemical science experimentation, with not a single drop of commercial product or commercial exploitation emanating from the joint development and licensing agreement, which agreements do not constitute a sale or bar under 35 U.S.C. § 102(b) ,"

The Federal Circuit Court has not accepted a single legal position of the USPTO/BPAI in this matter except for a single not scrutinized item, which the Court likely accepted without analysis so it could, without obstruction, address the on-sale issue with additional specificity, clarity and breadth.

In accordance with the findings of the United States Court of Appeals for the Federal Circuit and the RFI, Appellant requests that BPAI declare an interference with ACC and declare Appellant as senior party on the prima facie ACC signed documentation that Appellant had disclosed the invention to ACC and of being the first to invent as required by 37 CFR § 1.608.

Respectfully submitted,

 4-22-02
JOHN KOLLAR

Redox Technologies Inc
6 Spencer Court
Wyckoff, NJ 07481
201 652-8770